

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether OWCP abused its discretion in denying appellant's request for a telephonic hearing before an OWCP hearing representative pursuant to 5 U.S.C. § 8124.

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts of the case as presented in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On June 5, 2014 appellant, then a 42-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that he sustained bilateral degenerative knee conditions due to prolonged walking and standing while in the performance of duty. He stopped work on May 17, 2014.

OWCP denied the claim by decision dated September 16, 2014. It accepted that the identified work factors occurred as alleged, but denied the claim as the medical evidence of record contained insufficient medical rationale to establish causal relationship between those events and the claimed bilateral knee conditions.

On October 14, 2014 appellant timely requested a telephonic hearing before an OWCP hearing representative. Following the telephonic hearing held on May 4, 2015, the hearing representative affirmed the denial of his claim by decision issued July 6, 2015. The hearing representative found that the medical evidence of record was either insufficiently rationalized or factually inaccurate.

Appellant, through counsel, appealed to the Board on December 2, 2015. By order issued June 20, 2016, the Board dismissed the appeal at counsel's request.<sup>4</sup>

On June 21, 2016 appellant, through counsel, requested reconsideration of the merits of his claim. By nonmerit decision dated September 16, 2016, OWCP denied reconsideration, finding that additional medical reports from Dr. Robert Reppy, an attending osteopath Board-certified in family practice, were cumulative and repetitious, and therefore did not warrant a review of the merits of the claim.

Appellant, through counsel, appealed to the Board on November 8, 2016. During the pendency of that appeal, appellant submitted reports dated August 24, 2016 to March 15, 2017 by Dr. Reppy, who diagnosed chondromalacia of the right patella, bilateral medial meniscus tears, and bilateral knee osteoarthritis. Dr. Reppy prescribed physical therapy and noted work restrictions.

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<sup>3</sup> Docket No. 17-0203 (issued April 5, 2017); *Order Dismissing Appeal*, Docket No. 16-0285 (issued June 20, 2016).

<sup>4</sup> *Order Dismissing Appeal*, Docket No. 16-0285 (issued June 20, 2016).

By decision dated April 5, 2017, the Board set aside OWCP's September 16, 2016 decision and remanded the case for a merit review.<sup>5</sup>

On remand, appellant submitted additional reports from Dr. Reppy dated from April 5 to July 12, 2017, which reiterated previous diagnoses.

By decision dated August 3, 2017, OWCP denied modification of its July 6, 2015 decision as the medical evidence of record contained insufficient medical rationale to establish causal relationship between the accepted employment factors and the claimed bilateral knee conditions.

In a letter dated August 11, 2017 and received by OWCP on August 14, 2017, appellant, through counsel, requested a telephonic hearing before an OWCP hearing representative. He submitted reports dated August 17, 2017 from Dr. Reppy.

By decision dated September 12, 2017, a representative of OWCP's Branch of Hearings and Review denied appellant's request for a telephonic hearing as he had previously requested reconsideration. After exercising her discretion, the hearing representative further denied the request, finding that the issue could be equally well addressed through a request for reconsideration before OWCP's district office.

### **LEGAL PRECEDENT**

Section 8124(b)(1) of FECA, concerning a claimant's entitlement to a hearing before an OWCP hearing representative, states: Before review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary under subsection (a) of this section is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his claim before a representative of the Secretary.<sup>6</sup> A hearing is a review of an adverse decision by an OWCP hearing representative. Initially, the claimant can choose between two formats: an oral hearing or a review of the written record. In addition to the evidence of record, the claimant may submit new evidence to the hearing representative.<sup>7</sup>

A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carriers' date marking and before the claimant has requested reconsideration (whether or not reconsideration was granted).<sup>8</sup> Although there is no right to a review of the written record or an oral hearing as a matter of right if claimant has previously sought reconsideration, OWCP may within its

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<sup>5</sup> Docket No. 17-0203 (issued April 5, 2017).

<sup>6</sup> 5 U.S.C. § 8124(b)(1).

<sup>7</sup> 20 C.F.R. § 10.615.

<sup>8</sup> *Id.* at § 10.616(a); *S.F.*, Docket No. 17-0463 (issued September 8, 2017); *C.M.*, Docket No. 17-0596 (issued June 5, 2017); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

discretionary powers grant or deny a hearing when the request is untimely or made after reconsideration under section 8128(a).<sup>9</sup>

### **ANALYSIS**

The Board finds that OWCP properly denied appellant's request for a telephonic oral hearing.

Because appellant previously requested reconsideration on June 21, 2016, he was not entitled to a hearing as a matter of right under section 8124(b)(1) of FECA.<sup>10</sup>

The Board further finds that OWCP's hearing representative did not abuse her discretion in denying appellant's request for an oral hearing in her September 12, 2017 decision.<sup>11</sup> OWCP properly determined that the issue in this case could be addressed equally as well through a request for reconsideration and submission of new evidence relevant to the issue at hand.<sup>12</sup> The Board has held that the only limitation on OWCP's discretionary authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, a clearly unreasonable exercise of judgment, or actions taken which are contrary to logic and probable deduction from established facts.<sup>13</sup> In this case, the evidence of record does not indicate that OWCP's hearing representative abused her discretion in denying appellant's request for a hearing under these circumstances. Accordingly, the Board finds that OWCP properly denied his request for a hearing.

On appeal, counsel contends that OWCP's September 12, 2017 decision was contrary to fact and law. As set forth above, OWCP properly denied appellant's request for a hearing.

### **CONCLUSION**

The Board finds that OWCP properly denied appellant's request for a telephonic hearing under 5 U.S.C. § 8124 as he had previously requested reconsideration.

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<sup>9</sup> *Id.*; Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Review of the Written Record*, Chapter 2.1601.2(a) (October 2011).

<sup>10</sup> *S.F.*, *supra* note 8; *J.M.*, 16-0669 (issued October 24, 2016); *Marilyn F. Wilson*, 52 ECAB 347 (2001).

<sup>11</sup> *S.F.*, *supra* note 8; *J.D.*, Docket No. 15-1679 (issued December 14, 2015).

<sup>12</sup> *D.P.*, Docket No. 14-0308 (issued April 21, 2014); *D.J.*, Docket No. 12-1332 (issued June 21, 2013); *Mary B. Moss*, 40 ECAB 640, 647 (1989).

<sup>13</sup> *See R.G.*, Docket No. 16-0994 (issued September 9, 2016); *Teresa M. Valle*, 57 ECAB 542 (2006); *Daniel J. Perea*, 42 ECAB 214 (1990).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decision of the Office of Workers' Compensation Programs dated September 12, 2017 is affirmed.

Issued: May 10, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board